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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/709,904

06/04/2004

Brad R. Graham

71575-0003

8744

20915

7590

05/10/2006

MCGARRY BAIR PC
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EXAMINER

CHAPMAN, JEANETTE E

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 05/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/709,904	Applicant(s) GRAHAM ET AL.	
	Examiner Chapman E. Jeanette	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/17/04</u> . | 6) <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet</u> . |

Continuation of Attachment(s) 6). Other: PATENT COPY WITH ANNOTATIONS(ATTACHMENTS A &B).

Claims 1-20 are objected to because of the following informalities: there are several occasions in the claims where the word frontal is spelled "fontal". Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 5, 7-9, 11-13, 16-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Rapp (6182933). Rapp discloses a drip edge 10/42 mounted to a roof; see figures 3-5. The drip edge comprises:

- A frontal piece 12/14 comprising
- Mounting flange 20 comprising
 - A flexible portion 25
 - The flexible portion is between the frontal piece 12/14 and the strengthening portion 24 (claim 8)
- The frontal piece 12/14 is formed from a polymer having more rigidity than the flexible portion; see column 2, lines 23-37
- The frontal piece 12/14 is rigid enough to resist deflection
- The frontal piece is made of material that will be able to move relative to a roof to which it is mounted so that it will not buckle with thermal changes.

- The drip edge is formed of vinyl. See column 6 line 66 through column 7, line 35
- The frontal piece is colored by lights or other decorative trim placed thereon; see column 5, lines 20-26; With the former being true, the flexible portion 25 has a color different than the frontal piece 12/14 and the strengthening portion
- the frontal piece and mounting flange have a thickness in the range of .8mm and 1.5mm meeting the recited range of .8 to 1.3mm; see column 2, lines 54-65
- With the measurements given in column 4, lines 38-46, the flexible portion 25 is disposed about 1 inch from the frontal piece 12/14
- The strengthening portion has ribs 25; see annotations on patent copy
- a fascia cover mounting bracket 50 mounted to an adjacent fascia board 43
- a fascia cover 80 mounted on the bracket in a manner to be independently moveable relative to the fascia bracket
- the drip edge 10 and the fascia cover 80 will not buckle with thermal changes
- the drip edge is made of vinyl ; see above
- the drip edge 10 has a face 42 that covers a portion of the fascia cover 60 when the drip edge and the fascia system is mounted to a structure; see figures 3-5 and where the figures 4 and 5 meet in figure 3

- the frontal piece and the mounting flange may have the same thickness;
see column 3 lines 53-54.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-4,6, 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapp in view of Mills, Jr. (6845590).

Rapp discloses of extruded plastic for the drip edge and bracket and for the fascia cover metal. One of ordinary skill in the art would have appreciated using any material known in the art to create the desired function and purpose of the drip and fascia system. Metal can be made to be resilient/deflectable, elastic or rigid.. Mills discloses a cover and base plate having a drip edge which may be constructed of extruded aluminum. It would have been obvious to one of ordinary skill in the art to construct the drip and fascia cover of metal/aluminum for their durability.

Mills discloses a colored fascia. See column 4, lines 54-57. It would have been obvious to color any exposed portion of Rapp for aesthetic appeal as shown by Mills

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re*

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Ockert, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-2, 4-9, 11-20 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-6, 15-19, 23-30 of copending Application No.

10/904,679. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 3-4 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1-2 of copending Application No.

10/904679. Although the conflicting claims are not identical, they are not patentably distinct from each other because the materials of construction are considered obvious. One of ordinary skill in the art would have appreciated using any material known in the art to create the desired function and purpose of the drip and fascia system. Metal can be made to have resilient/deflectable, elastic or rigid properties.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Allowable Subject Matter

Claim 10 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E. Jeanette whose telephone number is 571-272-6841. The examiner can normally be reached on Mon.-thursday, 8:30-6:00, every fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Friedman Carl can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JEANETTE E. CHAPMAN
PRIMARY PATENT EXAMINER
ART UNIT 3635



US006182933B1

(12) **United States Patent**
Rapp

(10) **Patent No.:** **US 6,182,933 B1**
(45) **Date of Patent:** **Feb. 6, 2001**

PATENT COPIES w/ ANNOTATIONS

(54) **FRICION-MOUNTABLE HANGER**

OTHER PUBLICATIONS

(76) **Inventor:** **Daniel T. Rapp**, 6632 Spruce Dr.,
Cannon Falls, MN (US) 55009

"Four Prior Known Extrusion Profiles".

* cited by examiner

(*) **Notice:** Under 35 U.S.C. 154(b), the term of this
patent shall be extended for 0 days.

Primary Examiner—Anita M. King
Assistant Examiner—Jerome DeLuca

(74) **Attorney, Agent, or Firm**—R. C. Baker & Associates,
Ltd.

(21) **Appl. No.:** **09/316,901**

(57) **ABSTRACT**

(22) **Filed:** **May 22, 1999**

(51) **Int. Cl.**⁷ **A47B 96/06; E04G 5/06**

(52) **U.S. Cl.** **248/231.81; 248/231.31**

(58) **Field of Search** **248/231.31, 231.81,**
248/205.1, 237, 74.2

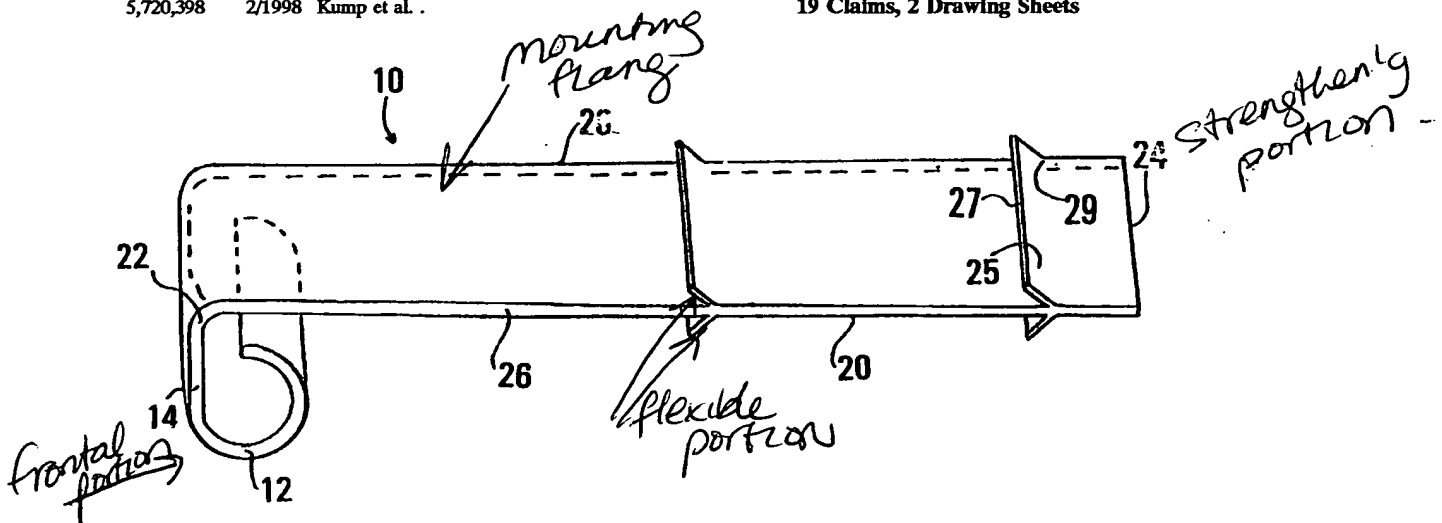
The friction-mountable plastic hanger has an extrusion profile that defines a stiff depending hook for hanging an object and a cantilevered mounting structure extending from the hook. The cantilevered structure may consist of a single mounting arm with resiliently deformable transversely extending fins angularly projecting from the opposite faces of the arm in a direction backward toward the hook, or a stiff U-shaped mounting structure having a pair of parallel cantilevered mounting arms with interior facing surfaces equipped with resiliently deformable transversely extending fins that angularly project from the interior surfaces of the arms in a direction backward toward the hook. All parts of both have a uniform width dimension that extends perpendicular to the extrusion profile. The fins on the mounting arms are resiliently deformed by bending into a frictionally engaging relationship against structural surfaces when the hangers are frictionally mounted.

(56) **References Cited**

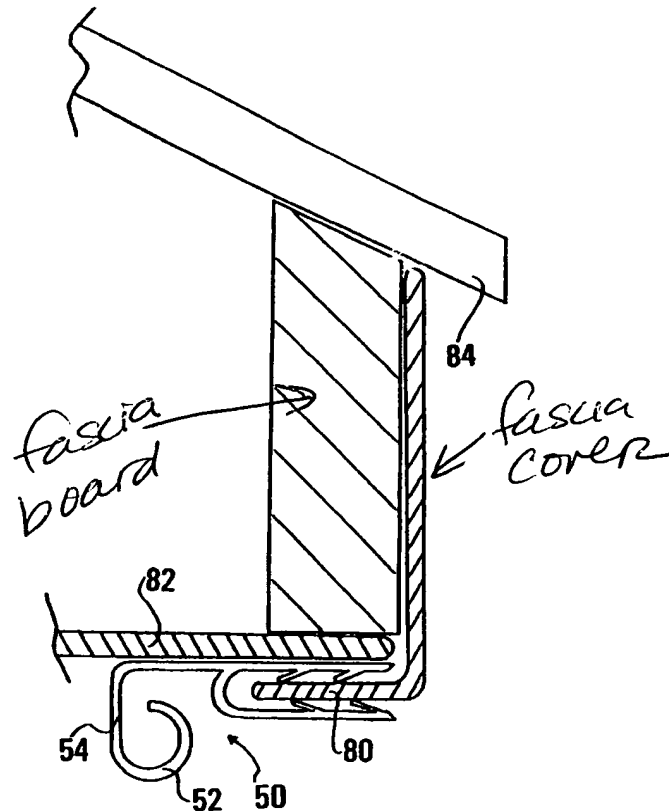
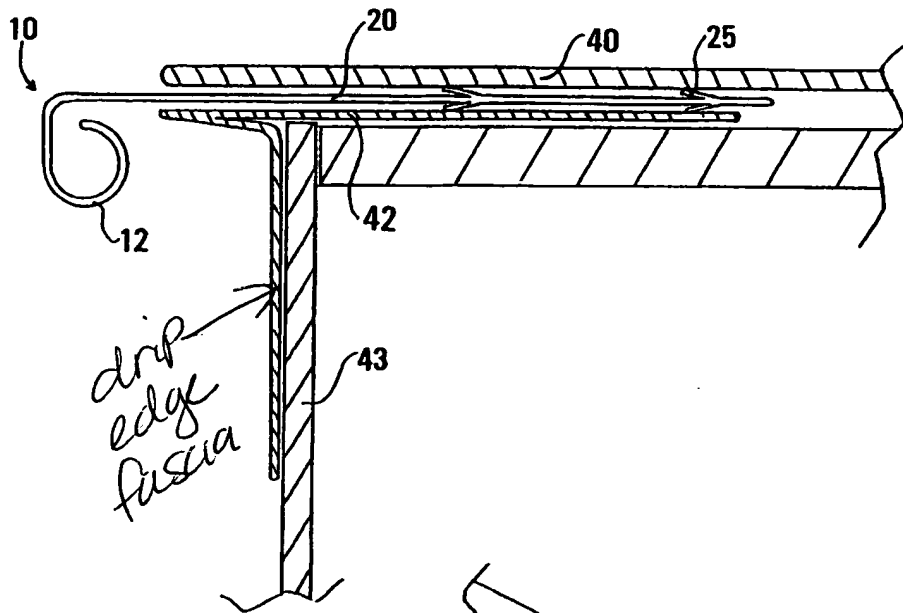
U.S. PATENT DOCUMENTS

1,495,485	5/1924	Jersemann .	
1,856,847	5/1932	Gates .	
2,657,442	11/1953	Bedford .	
3,074,676	1/1963	Watson .	
3,181,827	5/1965	Sassin .	
3,300,168 *	1/1967	Gaudino	248/231.81
4,811,475	3/1989	Morton .	
5,141,192	8/1992	Adams .	
5,364,050	11/1994	Smith .	
5,509,632	4/1996	Mesna et al. .	
5,720,398	2/1998	Kump et al. .	

19 Claims, 2 Drawing Sheets



PATENT COPY w/ ANNOTATIONS
Attachment A



PATENT COPY W/ANNOTATIONS